

To: Sunshine Reform Task Force Members

From: Public Information Subcommittee (Virginia Holtz, Bobbie Fischler, Dan Pulcrano and Dave Zenker)

Date: February 8, 2007

Subject: Public Information Section Recommendations

Our subcommittee looked at seven areas under the Public Information section and we've made recommendations under each area for the Task Force to consider. We think you'll find the majority of this section to be relatively straightforward, with the calendar disclosure section likely to take the better part of our discussion time.

- A. ***Definition of Public Information.*** We recommend adopting the following definition, which is the same as the Milpitas and San Francisco definition but slightly expanded to include San Jose's current practice: Public Information shall mean: *"The content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form, oral communication, or other format that contains information such as computer tape or disc or video or audio recording. Public Information shall not include "computer software developed by the City as defined in the California Public Records Act (Government Code Section 6254.9)."*
- B. ***Release of Oral Information.*** We recommend endorsing the existing practice used in the City of San Jose (see the description on page 3 of document G) and modeling the ordinance language after that which appears in the Milpitas Open Government Ordinance (see page 1 of document H).
- C. ***Public Review File.*** We recommend adopting the language as stated in the Milpitas and San Francisco ordinances (see page 3 of document H). This will constitute a change in San Jose practice because the City Clerk does not currently maintain a single file where all policy bodies submit agendas, minutes and memos to a public file for all to review. The Task Force may want to discuss better defining or perhaps limiting this provision in order to reduce unnecessary burden on the Clerk's Office but yet still achieve the intent of establishing a single warehouse of policy body communications. It's possible that the master calendar effort may help us achieve this.
- D. ***Internet Access/World Wide Web Minimum Standards.*** We recommend deferring discussion on this section until the Task Force considers the technology section.
- E. ***Calendars of Certain Officials.*** The Task Force has discussed this issue on two previous occasions, and we also had a somewhat extended deliberation with Council at their study session on November 30th. We also received a number of questions in writing from our

former Mayor. Our subcommittee has taken all of this information into account when considering the recommendations below.

- 1) **Frequency.** The current practice is to publish calendars in a .PDF format on a quarterly basis. We recommend changing this to weekly, on Fridays no later than 5pm. At that time, the calendar for that week ending shall be published. The City will soon be implementing new software technology that will allow council staff to simply export a Microsoft Outlook version of the calendar to the Web in a more dynamic format than the current static .PDF documents. Based on our previous discussions, the Task Force originally settled on a Monday and Thursday frequency of disclosure (every three days), but this was largely met with opposition by the Mayor and City Council at the study session as being too complicated for their staff to fulfill. For ease of implementation, our subcommittee recommends establishing a single day each week that calendars must be published. We can perhaps evaluate how the frequency works during the pilot period.
- 2) **Content.** For meetings not otherwise publicly noticed and recorded, the calendar shall include a general statement of issues being discussed. A lay person should be able to easily interpret the calendar items.
 - a) **Unscheduled Meetings.** City officials that conduct “impromptu” or unscheduled meetings that are of a significant basis shall still report those meetings retrospectively and in a timely manner. For example, conversations in the hallway or parking lot that lead to a substantial discussion of city business shall be placed on the calendar and reported. It shall be incumbent upon the city official himself or herself to determine what unscheduled meetings result in “substantial discussion” and should be reported. Beyond that enforcement is simply impossible, but the intent here should be loud and clear.
 - b) **Corrections and Amendments.** In the event a calendar needs to be corrected or amended, it shall be done at the time it is next published.
 - c) **Previous Periods.** The original recommendation of the Task Force was that at least three months of calendars be posted at all times. Perhaps this should be expanded? The more the better? Our subcommittee did not settle on a final recommendation.
- 3) **Exemptions.** In some cases, information on a calendar may be personal, private or proprietary and may need to be redacted and/or not disclosed with a complete description of the activity or discussion. We recommend that the Task Force establish reasonable exemptions in these cases. Some examples are:
 - a) **Personal Activities.** The San Francisco ordinance states: “...with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city.”
 - b) **Attorney Client Privilege.** The City Attorney shall be exempted from disclosing meetings involving attorney client privilege.
 - c) **Private or Proprietary Business.** The subcommittee discussed at length the notion that some city officials will need the option of conducting confidential meetings under certain circumstances. Weekly disclosure of those meetings may be harmful to the City or to the constituents involved. For example, we recommend that an exemption be allowed for corporate recruiting and retention, especially in cases where the City may be negotiating an economic development situation that is strategic or competitive. Are there other exemptions we should consider, such as whistleblower issues or complaint confidentiality? We suggest that the Task Force perhaps consider

using the closed session criteria as a framework for developing any other exemptions we create that would allow city officials to *not* disclose certain meetings on their calendars.

- 4) ***Applicability.*** Who does this requirement apply to? In addition to the Mayor and City Council, we recommend that these requirements shall also apply to the following: the City Manager, the City Attorney, the City Auditor, the City Clerk, the Redevelopment Agency Executive Director, the Independent Police Auditor, the Chief's of Staff of the Mayor and City Council, and every Department Head, which includes the Airport Director, Budget Director, Chief Development Office Director, Emergency Services Director, Employee Relations Director, Environmental Services Director, Fire Chief, Finance Director, General Services Director, Housing Director, Human Resources Director, Information Technology Director, Library Director, Parks Director, Planning Director, Police Chief, Public Works Director, Retirement Director, and the Transportation Director.
 - a) ***Web Publishing.*** We recommend that only the Mayor, City Council and the six Council appointees be required to publish their calendars to the website on a weekly basis as stated above.
 - b) ***Calendars upon Request.*** All other individuals stated above shall not be required to publish their calendars to the City's website, but their calendars shall still be considered public records and shall be promptly available upon request by a member of the public. All other provisions of this ordinance shall apply to these individuals equally.

F. ***Lobbyist on Behalf of City.*** Keep in mind that this section only speaks to lobbyists that are hired by the City to do work on behalf of San Jose. San Jose currently has two lobbyists. We recommend endorsing the existing practice used in the City of San Jose (see the description on page 7 of document G) and modeling the language for the ordinance after that which appears in the Milpitas Open Government Ordinance (it starts on page 5 of document H).

G. ***Additional Public Outreach***

- 1) ***Public Outreach for Land Use / Development Proposals.*** Our subcommittee agrees with staff's recommendation to reference Policy 6-30 which establishes a range of outreach efforts depending on the size of a land use proposal (see page 9 of document G). Policy 6-30 has also been provided for you as attachment B in your packet.
- 2) ***Outreach for Capital Projects.*** The subcommittee recommends referencing current city practice in the Sunshine ordinance. Please review the information provided by staff on page 9 of document G as well as attachment C which is a memo and accompanying documents regarding public outreach for capital projects.
- 3) ***Issues of Significant Public Interest.*** This item is related to Public Information Reform #4 (City contracts and expenditures of \$1M or more shall be made public no later than 2 weeks prior to be heard) and Public Information Reform #11 (establishing criteria for the Rules Committee to use to determine if something is an item of significant public interest).

Elected officials are the appointing authorities for their own staff (except classified admin)

Mayor's Staff
Council's Staff

Mayor &
City Council

The City Council is the **appointing authority** only for the **six Council appointees** identified in the City Charter.

COUNCIL

APPOINTEES

City Clerk

City Auditor

City Manager

City Attorney

IPA

SJRA Exec. Dir.

Staff

Staff

Staff

Staff

Staff

Department & Office Directors

Airport
Director

Budget
Director

Chief
Development
Office

Emergency
Services
Director

Employee
Relations
Director

Environmental
Services
Director

Fire
Chief

Finance
Director

General
Services
Director

Housing
Director

H.R.
Director

Information
Technology
Director

Library
Director

Parks
Director

Planning
Director

Police
Chief

Public Wks
Director

Retirement
Director

Transportation
Director